MOTION FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

No. 97-209

ROBERT J. TOLCHIN,
individually and on behalf of all others similarly situated,

Petitioner,

v.

THE SUPREME COURT OF NEW JERSEY, et al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF MICHAEL S. FETTNER, ESQUIRE, AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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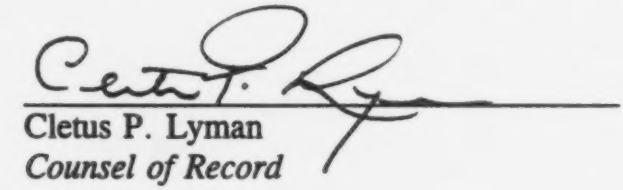
MOTION OF MICHAEL S. FETTNER, ESQUIRE,
FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE IN SUPPORT OF PETITIONER

Amicus curiae, Michael S. Fettner, Esquire[1], hereby moves, pursuant to Rule 37.4, Supreme Court Rules, for leave to file the accompanying brief in support of petitioner's challenge to New Jersey's *bona fide* office rule, R. 1:21-1(a), petitioner's questions one and two. Amicus has no interest in petitioner's question three, relating to New Jersey's skills and methods courses.

Petitioner and Supreme Court of New Jersey defendants have given their consent to *amicus* to file a brief in support of petitioner; ICLE defendants have not responded to amicus's request for consent.

Amicus has set forth his statement of interest in support of petitioner in his accompanying brief.



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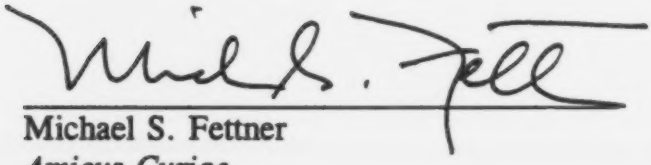

Michael S. Fettner
Amicus Curiae

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[1]Counsel for a party did not author this brief in whole or in part. No person or entity, other than amicus, made a monetary contribution to the preparation and submission of this motion and brief.

Questions Presented

1. Does the Supreme Court of New Jersey rule requiring lawyers to maintain a *bona fide* office within the state in order to practice law violate the Commerce Clause of the U.S. Constitution?

2. Does the Supreme Court of New Jersey rule requiring lawyers to maintain a *bona fide* office within the state in order to practice law violate the Privileges & Immunities Clause of the U.S. Constitution?

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BRIEF OF MICHAEL S. FETTNER, ESQUIRE, AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Michael S. Fettner, Esquire, hereby submits his brief as *amicus curiae* in support of petitioner's challenge to the Supreme Court of New Jersey rule requiring lawyers to maintain a *bona fide* office within the state in order to practice law, R. 1:21-1(a).[2]

Introduction

On the eve of the 21st century, as 15 European nations forge economic and social union, and as the world becomes a "global village" through worldwide communication in "cyberspace," the New Jersey Supreme Court (and members of its bar), construing as broadly as possible its constitutional grant of jurisdiction over the admission to the practice of law, and overlooking New Jersey legislative policies favoring cooperation with Pennsylvania and New York dating back at least to 1783, wishes to regress to the social and economic policies of the Middle Ages, when European craft guilds "enjoyed contiguous monopolies" and "controlled the bulk of trade, labour and production" in European towns.[3]

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[2]Amicus limits his brief to support Mr. Tolchin's challenge to the *bona fide* office requirement only. Amicus has no interest in petitioner's question three, regarding New Jersey's skills and methods classes.

[3]*See respectively*: *Treaty on European Union*, signed at Maastricht, Netherlands, 7 February 1992, Title I, Article B (a Union objective is "the strengthening of economic and social cohesion"); Reno v. ACLU, 519 U.S. ___, 117 S.Ct. 2329, 2334 (1997), affirming ACLU v. Reno, 929 F.Supp. 824 (E.D.Pa. 1996) (describing the character and dimension of the Internet as "a unique medium with content as diverse as human

This Court should grant certiorari to decide this important case under the Commerce Clause and Privileges & Immunities Clause, involving regulation of lawyers in the context of evolving multi-state and multi-national practice, along the rapidly expanding information superhighway. New Jersey lawyers and judges have adopted a rule designed to limit access of lawyers to New Jersey. The rule is beyond the reach of the democratic process, in the most densely populated and largest economic region in the nation.

Upon the 1996 amendment of the *bona fide* office rule, Cynthia M. Jacob, Esquire, then president of the New Jersey State Bar Association, was quoted as saying:[4]

> " . . . the bona fide office requirement ought to be 'strengthened rather than weakened' in the face of an 'invasion' by Philadelphia and New York lawyers."

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thought . . . available to anyone anywhere in the world with Internet access"); *N.J. Constitution*, Article VI, § 2, ¶ 3; New Jersey interstate compacts, N.J.S.A. Title 32 generally; for example, settling boundaries along the Delaware River in 1783, N.J.S.A. 52:28-25; Fernand Braudel, *The Wheels of Commerce*, pp. 314-316 (trans. ed. 1982)("The purpose of the guilds was to bring together the members of a single trade which they defended against all others . . .).

[4]*The Legal Intelligencer*, August 5, 1996, p.31. In a similar vein, see, *New Jersey Lawyer*, June 26, 1996, "Jersey Tells Philly Lawyers: Buzz Off!;" *New Jersey Lawyer*, August 12, 1996, "Invaders Irk South Jerseyans" (reporting that president of Burlington County, NJ, bar association president--also a secretary for New Jersey's District Ethics Committee, District III-B--accused Pennsylvania lawyers of being rude and ignorant of local procedures).

Ms. Jacob's sentiments are not new.

> "For years, New Jersey law firms have moaned that out-of-state law firms, especially those from Manhattan and Philadelphia, have been encroaching on their territory, wooing away their clients. . . In fact, New Jersey made it tough for out-of-staters to come here, by requiring firms to maintain and staff bona fide offices. 143 *N.J.L.J.* 768, 774 (Feb. 26, 1996)."

The real purpose of the rule is economic protectionism.[5] *See*, Richard L. Abel, *American Lawyers*, Chapters 5-7 (1989)(describing history of legal profession's efforts to restrict practice of law, including bans on non-lawyers and limiting supply of lawyers, and self-regulation, including use of ethical rules and disciplinary process for protectionist ends).

The history of New Jersey's rules governing the practice of law shows facial discrimination against out-of-state lawyers and blatant protectionism. In re Sackman, 90 N.J. 521, 448 A.2d 1014, 1017 (1982). The current rule, adopted in response to constitutional challenges to a prior version [in Sackman], does not satisfy constitutional objections, but is a subterfuge masking discriminatory and protectionist intent and effect.

In the face of its explicit recognition that the rule may have an element of protectionism, without a record, while acknowledging the lack of legal checks and balances to

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[5]"Many of the states that have erected fences against out-of-state lawyers have done so primarily to protect their own lawyers from professional competition." Smith, *Time for a National Practice of Law Act*, 64 A.B.A.J. 557 (1978).

ensure the rule was not designed primarily to benefit the New Jersey bar, and contrary to holdings of this Court, the Court of Appeals upheld the constitutionality of the office requirement on two unsupported "beliefs" that "there is a satisfactory basis to find a rational relationship between the bona fide office requirement and the intended benefit of attorney accessibility," and that those lawyers most burdened by the rule "do not constitute a very large class." Tolchin v. Supreme Court of N.J., 111 F.3d 1099, 1109 (3d Cir. 1997).

Statement of Interest of *Amicus Curiae*

Amicus is a resident of Philadelphia, PA.

On November 30, 1988, amicus became a member of the bar of the Supreme Court of Pennsylvania, and on December 19, 1988, became a member of the bar of the Supreme Court of New Jersey.

Amicus is an associate with Lyman & Ash, a law firm located in Philadelphia, PA, now made up of four lawyers. Lyman & Ash has a general litigation practice, and regularly handles cases in a variety of areas of law and jurisdictions.[6]

Lyman & Ash was formed in 1972. Until 1988, the

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[6]Recently reported decisions in which Lyman & Ash was involved include this case; McDaniels v. Flick, 59 F.3d 446 (3d Cir. 1995); Squires v. Bonser, 54 F.3d 168 (3d Cir. 1995); Larsen v. Senate, 955 F.Supp. 1549 (M.D.Pa. 1997); Gray v. St. Martin's Press, 929 F.Supp. 40 (D.N.H. 1996); Lyman v. Boonin, 535 Pa. 397, 635 A.2d 1029 (1993); and, von Pein v. von Pein, 268 N.J.Super. 7, 632 A.2d 830 (A.D. 1993).

firm did not handle any case in New Jersey. In 1988 and 1989, members of the firm were admitted pro hac vice in two cases in New Jersey. In 1993, the New Jersey Superior Court, Appellate Division, noted that the firm had done "a superb job" in a fraud conspiracy case. von Pein v. von Pein, 268 N.J.Super. 7, 632 A.2d 830, 836 (A.D. 1993).

In March 1994, the firm opened an office in Camden, NJ.

The New Jersey office is a burden without any corresponding benefit to Lyman & Ash, its clients, the New Jersey public, bench or bar.

The *bona fide* office requirement is vague as written and as interpreted, making compliance difficult.

The office requirement is in effect a tax or tariff, and is a burden because Lyman & Ash pays for additional rent, equipment, telephone and personnel. No one at Lyman & Ash needs or wishes to use this office. The office rule requires lawyers and clerical employees to go back and forth between Philadelphia and Camden.

Amicus's Philadelphia office is approximately three miles from his Camden office and from the Camden County Courthouse. From his Philadelphia office, amicus can reach the courthouse by way of PATCO train service in approximately fifteen minutes. Amicus is closer to the Camden County Courthouse, and can reach the courthouse more quickly and reliably because of the train service, than can other lawyers whose principal office is located in other sections of Camden County, who must rely on motor vehicles to reach the courthouse. Amicus's Philadelphia

office is located closer to courthouses in southern New Jersey than law offices in central and northern New Jersey. Amicus can reach Trenton, New Jersey's capital, by Amtrak in approximately 25 minutes.

Lyman & Ash has made a substantial investment in its Philadelphia office, including computers, a network system, computer software, including accounting and billing programs, filing systems, and training personnel. Lyman & Ash's lawyers, office manager, closed files, modems (with access to the internet) and small library are all in Philadelphia. Amicus prefers to work in his Philadelphia office, to which he walks every morning from his house on the west side of Rittenhouse Square.

The 1996 amendment to the rule added the requirement that a *bona fide* office is a place where clients can be met. This new requirement impinges on the constitutional rights of lawyers and clients to free interstate travel. Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 1329 (1969).

A corollary New Jersey rule (R. 1:21-6) requires that bank records, files, retainer agreements, and accounting records relating to New Jersey work, be kept in a New Jersey office. However, Lyman & Ash's accounting records are handled by its office manager in Philadelphia, and the accounting information is kept on Lyman & Ash's computer system in Philadelphia. Compliance with this book-keeping rule requires creating a second set of records and keeping them in a second office.

Moreover, R. 1:21-6 is absurd given that amicus's New Jersey accounts are with PNC Bank, N.A., headquartered in Pittsburgh, PA. Statements of these

accounts supposedly come from New Jersey (as shown by the return address on the envelope) but in reality, come from Philadelphia, as can be seen from the post-marks.

While the precise requirements of a *bona fide* office are unclear and are subject to interpretation and enhancement by judicial or committee gloss, New Jersey has made purported non-compliance with the rule an ethical violation.

Effective January 2, 1989, R. 1:21-1(a) was amended to add that "an attorney who practices law in New Jersey and fails to maintain a bona fide office there shall be deemed to be in violation of RPC 5.5(a)." Rule 5.5(a), Rules of Professional Conduct, says:

> "A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

With the 1989 amendment, a lawyer's compliance with the *bona fide* office rule is now not merely an administrative issue, but an ethical issue. Ethics committees, rather than administrative committees, investigate allegations that a lawyer is not in compliance with the rule. The amendment of R. 1:21-1(a) to make violations a subject of disciplinary action was done to provide an additional tool of harassment and intimidation, and is further evidence of protectionism.

New Jersey has not hesitated to discipline Pennsylvania and New York lawyers for purported non-compliance with the rule. *See*, Matter of Schutzman, 145 N.J. 568, 679 A.2d 151 (1996); Matter of Young, 144 N.J. 165, 675 A.2d 1117 (1996); Matter of Beck, 143

N.J. 308, 670 A.2d 1053 (1996); In re Kasson, 141 N.J. 83, 660 A.2d 1187 (1995).

The rule is used by New Jersey counsel and courts to discriminate against and harass Philadelphia lawyers as part of litigation strategy, including ex parte communications between local attorneys and judges.

For example, on March 1, 1996, amicus was scheduled to appear in Camden County Superior Court before Hon. Charles A. Little to argue discovery-related motions in a pending action. Judge Little was the managing judge of the action. Instead of hearing argument on the motions, Judge Little made false accusations from the bench and in front of a courtroom full of lawyers and litigants, that amicus does not maintain a *bona fide* office in New Jersey in accordance with R. 1:21-1(a). Judge Little said amicus "cannot speak in this Court." Excerpts of a reproduced transcript of the proceeding is attached as Appendix A.

Judge Little's accusations sprang from erroneous information he received ex parte from opposing counsel, who had supplied him with a secret "affidavit." Judge Little directed counsel to provide this "affidavit" to himself and also directed counsel not to serve it on amicus.

Argument

1. New Jersey's *bona fide* office requirement violates the Commerce Clause.

U.S. Constitution, Article I, § 8, clause 3, empowers Congress to regulate commerce among the several states. "In its negative aspect, the Commerce Clause prohibits economic protectionism--that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors [internal quotations and citations omitted]." Fulton Corp. v. Faulkner, 516 U.S. ___, 116 S.Ct. 848, 853 (1996).

A purpose of the dormant Commerce Clause is "to prevent a state from retreating into economic isolation . . . as it would do if it were free to place burdens on the flow of commerce across its borders that commerce within those borders would not bear." Id.

The Commerce Clause forbids discrimination, whether forthright or ingenious. It is the court's "duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce." West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 114 S.Ct. 2205, 2212 (1994)(internal quotations and citations omitted).

Faulkner held unconstitutional, North Carolina's "intangibles tax," assessed on a fraction of the value of corporate stock owned by North Carolina residents inversely proportional to the corporation's exposure to the state's income tax.

West Lynn struck down a Massachusetts statute

protecting in-state milk producers, designed to preserve local industry ensuring continuous and adequate supply of fresh milk. Also, Lewis v. BT Inv. Man. Inc., 447 U.S. 27, 42, 100 S.Ct. 2009, 2018-2019 (1980) (under dormant Commerce Clause, struck down Florida statute favoring in-state over out-of-state entities in investor services market); generally, Tribe, *American Constitutional Law*, § 6-12, "State Regulation which discourages Multi-State Business Structures" (2d Ed. 1988).

Faulkner, 116 S.Ct. at 855 n.3, cited Halliburton Oil Well Co. v. Reily, 373 U.S. 64, 72, 83 S.Ct. 1201, 1205 (1963), holding that "a state may not impose a tax which discriminates in favor of the local merchant so as to encourage an out-of-state operator to become a resident in order to compete on equal terms [internal quotations and citation omitted]."

Camps Newfound/Owatonna v. Town of Harrison, ME, 519 U.S. ____, 117 S.Ct. 1590, 1598-1601 (1997), held an otherwise generally applicable state property tax violates the Commerce Clause if its exemption for property owned by charitable institutions excludes organizations operated principally for the benefit of out-of-state residents.

The dormant Commerce Clause analysis in Tolchin confused discrimination against interstate commerce with residency status, which is the analysis under Privileges & Immunities. The court said that petitioner's "argument fails to implicate the Commerce Clause because such attorneys may be New Jersey residents as well as nonresidents" (111 F.3d at 1108):

"Any incidental discrimination caused by the bona fide

office requirement is not based on residency status but on the size and type of an attorney's practice."

Lyman & Ash is an out-of-state economic interest because the firm's lawyers practice in Philadelphia.

The *bona fide* office requirement discriminates against interstate commerce by increasing the cost out-of-state lawyers incur doing business in New Jersey; the rule particularly discriminates against small firms, like Lyman & Ash, because of the increased cost of practicing required by a second office and accompanying services, equipment, supplies, personnel. Requiring a second office does not advance any public policy or interest, but is a boon-doggle to New Jersey real estate interests.

The *bona fide* office requirement is parochial. Political boundaries are irrelevant to the ways in which commerce flows and people move.[7]

U.S. metropolitan areas have been designated by the U.S. Office of Management and Budget ("OMB") as metropolitan statistical areas ("MSA"), consolidated MSA's (CMSA"), and primary MSA's ("PMSA"). *Statistical Abstract of the U.S.*, 1995, U.S. Department of Commerce, Bureau of Census, September 1995, pages 960-961, 967; *Federal Register*, Vol. 55, No. 62, Friday, March 30, 1990, Part VI, OMB, "*Revised Standards for Defining Metropolitan Areas in the 1990's; Notice.*"

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[7]For example, recent statistics show that three percent of the U.S. population moves to another state each year; nearly eighteen percent move its residence annually. Sullivan, *Moving Day Involves More than Furniture*, 45 MANAGE, April 1994, p. 14.

The general concept of a metropolitan area is that of a core area containing a large population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.

OMB has designated five counties in Pennsylvania--Bucks, Chester, Delaware, Montgomery and Philadelphia--and four in New Jersey--Burlington, Camden, Gloucester and Salem--as the "Philadelphia, PA-NJ" PMSA.

These designations show the high degree of economic and social integration of Philadelphia and southern New Jersey. Such integration is amply shown by various regional organizations that operate in New Jersey and Pennsylvania, and compacts between the two states. Examples include:

** New Jersey's Solid Waste Management Act charges its Environmental Protection Department to cooperate with counterparts in New York and Pennsylvania in developing regional regulations for handling medical waste. N.J.S.A. 13:1E-48.19.

** On May 12, 1994, Pennsylvania and New Jersey formally unified their Delaware River port agencies, creating the Port of Philadelphia and Camden, in order to secure employment in the region, develop regional master plans, and help the region build an integrated ship-rail-highway transportation network. Delaware River Port Authority, N.J.S.A. 32:3-2, *et seq.*

** New Jersey and Pennsylvania created the Delaware Valley Urban Area Compact, N.J.S.A. 32:27-2, comprised of four New Jersey counties and five Pennsylvania counties, and the Delaware Valley Regional Planning

Commission, N.J.S.A. 32:27-8, for the purpose of organizing and conducting "a continuing, comprehensive, co-ordinated regional planning program for the area, including but not limited to transportation planning." N.J.S.A. 32:27-3.

** New Jersey and Pennsylvania agreed to "concurrent jurisdiction within and upon the water of the Delaware River" in 1783, six years before the U.S. Constitution was ratified. N.J.S.A. 52:28-25.

** In addition to compacts with New York, Pennsylvania and Delaware, New Jersey has entered into several multi-state compacts, including Atlantic States Marine Fisheries (32:21-1); Vehicle Equipment Safety (32:26-1); Air Pollution Control (32:29-2); and, Pest Control (32:30-1). Generally see, Title 32 of New Jersey Statutes Annotated for interstate compacts.

** New Jersey created a "Central-Atlantic Region," under its banking and savings and loan statutes, including Pennsylvania, Delaware and District of Columbia (New York is not included), to provide for reciprocity in operation and acquisition of certain lending institutions. N.J.S.A. 17:12B-278. Interstate banks, including PNC Bank, N.A., have multi-state operations, including in NJ and PA.

** Bell Atlantic is the regional local telephone company, providing service in Pennsylvania, New Jersey, New York, New England, Delaware and Maryland.

** According to an analysis published in *The Philadelphia Inquirer*, on May 26, 1996, about 32% of New Jersey shore property south of Barnegat Light to

Cape May Point, is owned by Pennsylvanians.

Office requirements benefits the economic interests of resident lawyers by increasing the costs of out-of-state competitors, who are thereby discouraged from practicing in New Jersey. In-state lawyers protect themselves from increased competition. The New Jersey public is thus apt to pay more for legal services and to have its choice of lawyers limited.

2. New Jersey's *bona fide* office requirement violates the Privileges & Immunities Clause.

While the *bona fide* office requirement is expressly neutral, as between residents and nonresidents, its effect overwhelmingly burdens nonresidents. As Sackman held (448 A.2d at 1020):

> " . . . we assume that practically the overwhelming majority of attorneys have their principal office in the state where they live."

New Jersey residents overwhelmingly would have their offices in New Jersey with or without the rule. Amicus and other nonresidents would not have New Jersey offices but for the rule. Overwhelmingly, lawyers need an office to practice law. But they do not need two. New Jersey residents would overwhelmingly have offices in New Jersey from which they could practice law in New Jersey, New York, Pennsylvania or the 47 other states. Philadelphia lawyers would overwhelmingly carry on their New Jersey practices from their Philadelphia offices.

Article IV, § 2, of the U.S. Constitution, says "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The Clause was intended to fuse into one nation a collection of independent, sovereign states. Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156 (1948).

The Clause "establishes a norm of comity without specifying the particular subjects as to which citizens of one State coming within the jurisdiction of another are guaranteed equality of treatment." Austin v. New Hampshire, 420 U.S. 656, 660, 95 S.Ct. 1191 (1975).

New Jersey's *bona fide* office requirement is at odds with precedent of this Court: Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 105 S.Ct. 1272 (1985); Frazier v. Heebe, 482 U.S. 641, 107 S.Ct. 2607 (1987); Supreme Court of Virginia v. Friedman, 487 U.S. 59, 108 S.Ct. 2260 (1988); Barnard v. Thorstenn, 489 U.S. 546, 109 S.Ct. 1294 (1989).

The only basis for the office requirement sustained by the Court of Appeals was availability to courts, clients and counsel, relying on In re Kasson, 141 N.J. 83, 660 A.2d 1187 (1995). However, this Court has rejected availability as a reason for discrimination.

> "There is no more merit to [New Hampshire's] assertion that a nonresident member of the bar at times would be unavailable for court proceedings." Piper, 105 S.Ct. at 1279-1280.
>
> "We further conclude that any need the court may have to ensure the availability of attorneys does not justify the in-state office requirement. As observed

with regard to state residency requirements, there is no link between residency within a State and proximity to a courthouse." Frazier, 107 S.Ct. at 2613.

Barnard rejected this ground, relying mainly on Piper, but in more compelling circumstances, because the Virgin Islands is so far from the U.S. mainland. If Barnard rejects discriminatory residency requirements based on "geographical isolation" and inadequate levels of competence of nonresidents in local law based on "lack of access to local statutes, regulations and court opinions," *a fortiori* for Philadelphia lawyers practicing in New Jersey out of their Philadelphia offices.

Reliance on Kasson was misplaced, in that the requirement of a Pennsylvania lawyer to have two offices created the availability problem in the first place. Had the New Jersey judge looking for atty. Kasson called his Pennsylvania office, he would have found Kasson there. Neither New Jersey nor the Court of Appeals has said what "availability" means.

Paradoxically, Ms. Jacob complains about an "invasion" of Philadelphia and New York lawyers to New Jersey, while the Court of Appeals held the office requirement is necessary to ensure the availability in New Jersey of these very same invading lawyers!

Had the lower courts permitted those challenging the rule to develop an evidentiary record, the record would have shown numerous examples of harassment and discrimination, including:

** opposing counsel use the *bona fide* office "card" as a litigation tactic;

** lawyers are "grilled" in open court by judges about their New Jersey office;

** lawyers are asked by judges how much time they spend in their New Jersey offices;

** attorneys fees awarded in a class action were held in escrow by a New Jersey judge pending determination by the Superior Court of the "bona fideness" of a lawyer's New Jersey office[8];

** sole practitioners have been harassed by investigators and have closed their New Jersey offices;

** lawyers are quizzed by a judge about their New Jersey telephone numbers; and,

** Superior Court judges announce in open court that they will refer lawyers whom they think may not be in compliance with the *bona fide* office requirement to ethics committees for investigation, in flagrant violation of lawyers' rights to confidentiality under New Jersey law, R. 1:20-9, and New Jersey's scheme for investigating allegations of ethical misconduct. R. 1:20 et seq.

Such judicial conduct is intended to discourage nonresident lawyers from practicing in southern New Jersey, thereby increasing business for resident lawyers.

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[8]*See*, *New Jersey Lawyer*, February 19, 1996, "What's a Bona Fide Office Worth? Try $170,000," p. 10. Judge Barry Weinberg's conduct, without jurisdiction, was particularly outrageous in light of the quality of work performed by the Philadelphia firm for the benefit of New Jersey residents. Strawn v. Canuso, 140 N.J. 43, 657 A.2d 420 (1995).

The effect is to diminish the competition faced by out-of-state lawyers, to the benefit of resident lawyers, but to the detriment of the New Jersey public, bench and bar, and the overall administration of justice in New Jersey.

There are 11 law schools in New York City, 4 in the Philadelphia area (not counting Rutgers-Camden), and only two in New Jersey (Rutgers, with two branches, and Seton Hall).

New Jersey apparently is afraid of this vast pool of lawyers and legal learning on its northern and southern borders. But such legal resources, derived through cross-pollinization of ideas, practices and experiences of lawyers from many jurisdictions, are a benefit to the New Jersey public, bench and bar. Competition elevates the level of practice and thereby improves the quality of justice.

Piper recognized that out-of-state lawyers, unafraid to champion unpopular causes, are beneficial to a state and good for the "maintenance or well-being of the Union." 470 U.S. at 284. Indeed, the term "Philadelphia lawyer" was coined as a result of just such a cause, when, in 1735, Alexander Hamilton, a leader of the Philadelphia bar, defended John Peter Zenger in New York, in colonial America's most famous freedom of speech case.[9]

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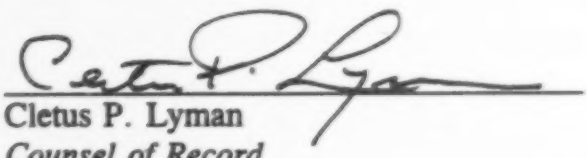
[9]See, *Encyclopedia of the American Constitution*, Vol. IV, "Zenger's Case" (1988).

The U.S. District Court for the District of New Jersey is familiar with the anomaly created by the office rule. The district court had an in-state office requirement until 1987, when the rule was invalidated by Frazier. Since then, amicus can practice in New Jersey federal court from Philadelphia, but in order to practice in New Jersey state court, must have a *bona fide* office in New Jersey.

Conclusion

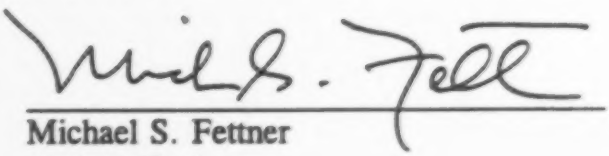
Amicus curiae Michael S. Fettner asks this Court to grant certiorari and to reverse the May 2, 1997, judgment of the Court of Appeals.

Dated: October 22, 1997.



Cletus P. Lyman
Counsel of Record

Dated: October 6, 1997.



Michael S. Fettner
Amicus Curiae

Appendix A

Excerpts from transcript of "discovery hearing" held March 1, 1996, in *Winokur et al. v. Princeton Insurance Company, et al.*, No. L-1733-95, Superior Court of New Jersey, Camden County, Law Division.

"THE COURT: Winokur versus Princeton.

* * *

"MR. McGUIRE: Thomas F. McGuire, for the plaintiffs.

"MR. FETTNER: Michael S. Fettner, also for plaintiffs.

"MS. FARRELL: Megan Farrell, from Parker, McCay & Criscuolo, on behalf of defendant, Princeton Insurance Company.

* * *

"THE COURT: Before we start, Mr. Fettner, I ask you, Sir, do you have a New Jersey office?

"MR. FETTNER: Yes.

"THE COURT: Where?

"MR. FETTNER: 411 Cooper Street.

"THE COURT: Your phone number at that office?

"MR. FETTNER: 342-9719.

"THE COURT: Is that the elevator number?

"MS. FARRELL: I believe so, Your Honor.

"MR. FETTNER: Is that the elevator number?

"THE COURT: Telephone number that you give answers to the elevator at Cooper Hospital.

"MR. FETTNER: 342-9719?

"THE COURT: 9719 -- 342-9719, at the office that you give, 411 Cooper Street is a receptionist. Your name does not appear on the front door or on the inside door. Receptionist states: "You do not have an office there. That it was a mail drop." And, I ask, Sir, is that true or is that false?

"MR. FETTNER: We have an office there, Your Honor, that's in conformity with the bona fide office requirement under the rule. We have -- our name is on the -- when you walk inside the vestibule of it -- of the building, there's a plaque that has a listing of the firms and our name is on there. To my knowledge, Your Honor, I don't understand why 342-9719 doesn't ring up a line at 411 Cooper Street.

"THE COURT: I don't either, but there is a question, and I am directed, if it's not already been done, that the matter be referred to the Ethics Committee as to the bonafideness of Mr. Fettner's in the State of New Jersey, and under Rule 1:21-1, in my rule book that is in my chambers, that that rule has not been complied with, therefore, because of that, any response to motions today will be Mr. McGuire since he is New Jersey Counsel. He does have a bona fide office. Has practiced here for many years. I refer you to Rule 1:21-1 . . .

* * *

It has been brought to my attention that yesterday, the day before yesterday, an attempt was made to deliver pleadings to the Cooper Avenue -- Cooper Street address. You were not there. The individual dropping the mail was told that you do not have an office there and that it was a mail drop for you.

As a Judge of the Superior Court of New Jersey, I have an obligation, unless someone else will do so, to report this matter to the Ethics Committee, and you cannot speak in this Court until the matter is resolved."

Certificate of Service

Undersigned *amicus curiae* hereby certifies that two copies of the foregoing brief were served upon counsel for petitioner and respondents, via first-class mail, on October 6, 1997.

Served upon:

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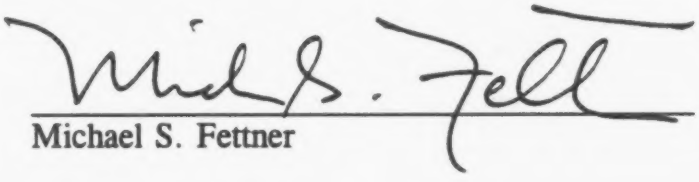

Michael S. Fettner